

Krista Enns (SBN: 206430)  
Benesch, Friedlander, Coplan & Aronoff LLP  
100 Pine Street, Suite 100  
San Francisco, CA 94111  
Telephone: 628-600-2241  
kenns@beneschlaw.com

Michael Dominic Meuti (SBN: 227939)  
Benesch, Friedlander, Coplan & Aronoff LLP  
200 Public Square, Suite 2300  
Cleveland, OH 44114-2378  
Telephone: 216.363.4500  
Facsimile: 216.363.4588  
mmeuti@beneschlaw.com

Erin N. Baldwin (*Pro Hac Vice forthcoming*)  
Benesch, Friedlander, Coplan & Aronoff LLP  
41 South High Street, Suite 2600  
Columbus, OH 43215-6164  
Telephone: 614.223.9300  
Facsimile: 614.223.9330  
[enbaldwin@beneschlaw.com](mailto:enbaldwin@beneschlaw.com)

*Attorneys for Defendants SmileDirectClub, Inc.,  
SmileDirectClub, LLC., and Jeffrey Sultizer*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO/OAKLAND DIVISION

ARNOLD NAVARRO, *on behalf of himself and others similarly situated*

**Plaintiff,**

V.

SMILEDIRECTCLUB, INC.;  
SMILEDIRECTCLUB, LLC;  
JEFFREY SULITZER: DOES 1-10

## Defendants.

CASE NO. 3:22-CV-00095-WHO

## **DEFENDANTS' OPPOSITION TO MOTION TO REMAND**

Date: March 30, 2022  
Time: 2 p.m.  
Place: Courtroom 2 - 17th Floor  
Judge: Hon. William H. Orrick

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## **I. STATEMENT OF ISSUES**

1. Supreme Court precedent holds that a corporation is a citizen of both its state of incorporation and the state where its “nerve center”—generally, its headquarters—is located. SmileDirectClub, Inc. is incorporated in Delaware. Its headquarters is in Tennessee, where its high-level officers direct, control, and coordinate its activities. For diversity jurisdiction purposes, is SmileDirectClub, Inc. a citizen of California?

2. An individual is considered a citizen of the state where he is domiciled or where he lives and intends to remain. Jeffrey Sulitzer resides in Washington and intends to remain there indefinitely. For diversity jurisdiction purposes, is Sulitzer a citizen of California?

3. An unincorporated entity takes on the citizenship of each of its members. No members of SmileDirectClub, LLC are citizens of California. For diversity jurisdiction purposes, is SmileDirectClub, LLC a citizen of California?

*If the Court answers no to the first three questions, it need not address the fourth.*

4. Plaintiff alleges that the purported class consists of approximately 100,000 individuals and that SmileDirectClub, LLC has a \$100M business in California. His Complaint seeks disgorgement of all moneys that putative class members paid to Defendants. The minimum cost of utilizing Defendants' telehealth platform for aligner treatment during the relevant period was \$850. Does the amount-in-controversy surpass \$5,000,000 to satisfy CAFA jurisdiction?

## II. INTRODUCTION

Plaintiff Navarro’s Motion to Remand to Alameda Superior Court (the “Motion”) ignores the applicable legal standards, the applicable burdens of proof, and the factual bases for federal jurisdiction outlined in Defendants’ Notice of Removal. Navarro’s Motion raises only a facial—not a factual—challenge to federal jurisdiction. The Motion offers no reason to doubt that both CAFA and the diversity statute confer jurisdiction—much less any evidence undermining Defendants’ invocation of federal jurisdiction. Moreover, the evidence attached to Defendants’ Motion to Compel Arbitration and to this Opposition confirms that federal jurisdiction is proper.

1 Removal was proper because federal jurisdiction exists under two separate provisions of 28 U.S.C.  
 2 § 1332. The Court has jurisdiction under § 1332(a) because none of the Defendants is a California citizen,  
 3 but Navarro—the only plaintiff in this case—is a California citizen. What’s more, the Notice of Removal  
 4 showed that Navarro’s Complaint puts more than \$75,000 in controversy, and Navarro’s Motion to  
 5 Remand does not suggest otherwise. The Court has diversity jurisdiction.

6 The Court also has CAFA jurisdiction. Navarro’s Complaint seeks to rescind approximately  
 7 100,000 contracts and refund all moneys paid under them. Clear-aligner treatment through  
 8 SmileDirectClub, LLC’s telehealth platform currently costs \$1950 and during the relevant period has  
 9 never cost less than \$850. When even that lower number is multiplied by the approximate number of  
 10 contracts Navarro seeks to rescind, there is well over \$5 million in controversy. And because no  
 11 Defendant is a citizen of California, neither CAFA’s local-controversy exception, nor its home-state  
 12 exception can apply. CAFA also confers jurisdiction.

13 Navarro’s Motion for Remand presents neither any difficult issues nor any credible arguments for  
 14 remand. The Court has jurisdiction and should thus deny Navarro’s Motion.

15 **III. RELEVANT BACKGROUND**

16 On December 3, 2021, Navarro sued Defendants on behalf of himself and a purported class. His  
 17 Complaint alleges seven causes of action, including declaratory relief, rescission of patient contracts,  
 18 negligence, breach of fiduciary duty, unfair business practices, Consumer Legal Remedies Act, and  
 19 fraudulent inducement. Dkt. 1-1 (Compl.) ¶¶ 34–112). Navarro sued SmileDirectClub, LLC (the  
 20 operating company) along with SmileDirectClub, Inc. (a holding company and SmileDirectClub LLC’s  
 21 indirect parent) and Jeffrey Sulitzer (whom Navarro now says he is suing as the LLC’s Chief Clinical  
 22 Officer, *see* Dkt. 22-2 (Decl. of Blake Lindemann in Support of Mot. to Remand to Alameda Super. Ct.  
 23 (“Lindemann Decl.”)) ¶ 2).

24 Navarro’s counsel characterizes the Complaint as alleging that Defendants “engaged in the  
 25 unauthorized practice of dentistry,” Lindemann Decl. ¶ 2, though the actual allegations in the Complaint  
 26 are less clear. Notably, though Navarro focuses many of his allegations on practices at the physical  
 27 locations where SmileDirectClub customers may initiate their relationship with SmileDirectClub, known

1 as “SmileShops,” Navarro never alleges that received any services at a SmileShop. And evidence  
 2 submitted in support of Defendants’ Motion to Compel Arbitration shows that he did not receive services  
 3 at a SmileShop. Dkt. 20 (Decl. of Justin Skinner in Support of Def’ts’ Mot. to Compel Arb.) ¶¶ 20–21  
 4 (“Skinner Decl.”) (explaining that Navarro utilized Defendants’ impression kit, rather than a SmileShop).

5 **IV. LEGAL STANDARD**

6 Navarro’s Motion misstates the applicable standards in multiple ways. First, Navarro says that  
 7 courts apply a presumption against removal. For CAFA removals, however, the Supreme Court has  
 8 expressly rejected that proposition. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89  
 9 (2014) (“[N]o antiremoval presumption attends cases invoking CAFA, which Congress enacted to  
 10 facilitate adjudication of certain class actions in federal court.”). For non-CAFA removals, the Supreme  
 11 Court has neither endorsed nor expressly rejected such a presumption. *Id.*

12 Second, Navarro argues that Defendants had a burden in their Notice of Removal to *prove*, with  
 13 evidence, that federal jurisdiction exists. This too is incorrect. Instead, Defendants’ burden was to  
 14 plausibly allege facts supporting federal jurisdiction. *Id.* Defendants’ burden to produce evidence in  
 15 support of federal jurisdiction does not arise unless and until Navarro contests the jurisdictional  
 16 allegations. *Id.* Moreover, only factual—as opposed to facial—challenges to jurisdiction trigger  
 17 Defendants’ evidentiary burden. *Salter v. Quality Carriers, Inc.*, 974 F.3d 959, 964–65 (9th Cir. 2020).  
 18 At that point, the Court must determine, “by a preponderance of the evidence, whether the amount-in-  
 19 controversy requirement has been satisfied.” *Dart Cherokee*, 574 U.S. at 88.

20 Here, Navarro does not mount a factual challenge to any of Defendants’ jurisdictional allegations,  
 21 and thus does not trigger any evidentiary burden. Instead of challenging the factual basis supporting  
 22 Defendants’ Notice of Removal, Navarro merely asserts unfounded legal arguments regarding  
 23 Defendants’ states of citizenship. Nonetheless, Defendants—both in prior filings and in conjunction with  
 24 this Opposition—have supplied evidence sufficient to show jurisdiction by a preponderance of the  
 25 evidence for those jurisdictional allegations which Navarro has challenged.

26 **V. ARGUMENT**

27 Defendants’ Notice of Removal established federal jurisdiction under both CAFA and § 1332(a).

1 Both provisions confer jurisdiction here. But to reject Navarro's Motion, the Court need find that  
 2 jurisdiction exists under only one.

3       A.    CAFA confers federal jurisdiction and nothing in Navarro's Motion suggests  
 4       otherwise.

5           1.    *As Defendants' Notice of Removal established, CAFA confers jurisdiction.*

6       Federal courts have jurisdiction under CAFA when three requirements are met: (1) minimal  
 7 diversity of citizenship, (2) a proposed class of at least 100 members; and (3) at least \$5 million in  
 8 controversy. 28 U.S.C. § 1332(d).

9       *First*, minimal diversity among the parties exists. Navarro is a California citizen. Dkt. 1-1  
 10 (Compl.) ¶ 4. None of the Defendants is a California citizen.

11       SmileDirectClub, Inc. is not a California citizen. Under the diversity statute, a corporation like  
 12 SmileDirectClub, Inc. is a citizen of its place of incorporation and principal place of business. 28 U.S.C.  
 13 § 1332(c)(1). A corporation's principal place of business is "the place where a corporation's officers  
 14 direct, control, and coordinate the corporation's activities . . . normally . . . the place where the corporation  
 15 maintains its headquarters." *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010). For a holding company,  
 16 the principal place of business is where board meetings are held. *Fazaei v. Macy's Inc.*, No. 20-cv-00464-  
 17 RS, 2020 WL 9457055, at \*2 (N.D. Cal. Mar. 16, 2020). SmileDirectClub, Inc. is incorporated in  
 18 Delaware. Dkt. 19 (Decl. of Troy Crawford in Support of Def'ts' Mot. to Compel Arb. ("Crawford  
 19 Decl.")) ¶ 4. SmileDirectClub, Inc.'s officers direct and control the corporation from its Nashville  
 20 headquarters, where it conducts board meetings. Decl. of Jeffrey Sulitzer in Support of Def'ts' Opp. to  
 21 Mot. to Remand ("Sulitzer Decl.") ¶ 12. SmileDirectClub, Inc. is therefore a citizen of Delaware and  
 22 Tennessee, not California.

23       SmileDirectClub, LLC is not a California citizen, either. Limited-liability companies like  
 24 SmileDirectClub, LLC take on the citizenship of each of its members.<sup>1</sup> *Johnson v. Columbia Props.*

25  
 26       <sup>1</sup> In the Notice of Removal, Defendants mistakenly stated that SmileDirectClub, LLC is a Delaware  
 27 limited liability company, however, it is in fact a Tennessee limited liability company. Crawford Decl.  
 28 ¶ 3. Defendants' counsel apologizes for any resulting confusion. This mistake is jurisdictionally  
 irrelevant, as, a limited liability company's state of organization does not determine its citizenship.

1 *Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). SmileDirectClub, LLC's only member is another LLC,  
 2 whose members are citizens of Delaware, Michigan, Arizona, Florida, Illinois, and Tennessee, Crawford  
 3 Decl. ¶¶ 3–4, making SmileDirectClub, LLC a citizen of each of those states as well.<sup>2</sup> As none of its  
 4 members are California citizens, SmileDirectClub, LLC is therefore not a California citizen.

5 Defendant Jeffrey Sulitzer is also not a California citizen. An individual's citizenship is  
 6 determined by his domicile, or where he has established a residence and intends to remain permanently or  
 7 indefinitely. *Lew v. Moss*, 797 F.2d 747, 749–50 (9th Cir. 1986). The subjective component of the  
 8 domicile test may be established by objective factors, including residence, voting, property, brokerage or  
 9 bank account, spouse and family, employment, driver's license, automobile registration, tax payments,  
 10 and organizational memberships. *Id.* at 750. Based on the above factors, Sulitzer is domiciled in, and  
 11 therefore a citizen of, Washington.<sup>3</sup> Sulitzer maintains a residence in Woodland, Washington and intends  
 12 to remain in Washington indefinitely. Sulitzer Decl. ¶ 3. Sulitzer owns property in Washington, pays  
 13 taxes as a resident of Washington, and is registered to vote in Washington. *Id.* ¶ 5–6. He has a Washington  
 14 driver's license, and his automobiles are registered in Washington. *Id.* ¶ 7–8. He maintains brokerage and  
 15 bank accounts in Washington. *Id.* ¶ 9. Furthermore, his spouse lives with him in Washington. *Id.* ¶ 4.  
 16 While Sulitzer is employed by SmileDirectClub, LLC, he works remotely from his home in Washington.  
 17 *Id.* ¶ 10. He is a member of the Washington State Dental Association. *Id.* ¶ 11. This evidence establishes  
 18 that Sulitzer is a Washington, not California, citizen. But even if the Court were to ignore the above, the  
 19 preponderance of the evidence already in the record supports the conclusion that Sulitzer is a Washington  
 20 citizen. Exhibit 1 to Navarro's Motion shows that Sulitzer's address on file with the California Dental  
 21 Board is his Woodland, Washington address. Dkt. 22-3 at 2. Exhibit 3 to Navarro's Motion, Sulitzer's  
 22 LinkedIn profile, also lists Sulitzer's address as being in Woodland, Washington. Dkt. 22-3 at 43. In  
 23

24 *Johnson*, 437 F.3d at 899.

25 <sup>2</sup> Since filing the Notice of Removal, counsel has learned that one of that LLC's members is an Arizona  
 26 citizen, and through the Crawford Declaration corrects the Notice of Removal's omission of Arizona as a  
 27 state of citizenship for SmileDirectClub, LLC.

28 <sup>3</sup> In the Notice of Removal, Defendants mistakenly stated that Defendant Sulitzer was a citizen of Oregon.  
 29 Defendants' counsel has since learned that he is in fact a citizen of Washington. Defendants' counsel  
 30 regrets any confusion this oversight may have caused.

1 short, Navarro offers evidence showing that Sulitzer is a Washington citizen, but no reason to believe that  
 2 Sulitzer is a California citizen.

3 Because Defendants have established that no Defendant is a California citizen, CAFA's minimal-  
 4 diversity requirement is satisfied.

5 The **second** CAFA requirement is also met, as the class consists of more than 100 members.  
 6 Navarro explicitly alleges that the putative class includes "approximately 100,000 persons in the State of  
 7 California." Dkt. 1-1 (Compl.) ¶ 28. This allegation, accepted as true, indicates that the class has more  
 8 than 100 members, and, thus, satisfies this requirement. *Peralta v. Countrywide Home Loans, Inc.*, No.  
 9 C 09-3288 PJH, 2009 WL 3837235, at \* 3 (N.D. Cal. Nov. 16, 2009) ("[t]he requirement of 100 persons  
 10 or more is satisfied here, as plaintiffs allege that they 'are informed and believe that the entire Class  
 11 consist[s] of approximately tens of thousands of individuals residing in California"). Navarro does not  
 12 challenge this number in his Motion to Remand.

13 **Third**, the \$5 million amount-in-controversy requirement is also satisfied. In his Motion to  
 14 Remand, Navarro offers no evidence that the amount-in-controversy is less than \$5 million, offering only  
 15 unsupported disagreement. This disagreement is curious, as Navarro alleges in the Complaint that  
 16 Defendants' "California operation" is a \$100 million-dollar enterprise. Dkt. 1-1 (Compl.) ¶ 2. Defendants  
 17 had no burden to include evidence in support of the jurisdiction allegations in the Notice of Removal. *Dart*  
 18 *Cherokee*, 574 U.S. at 84, 89. Nevertheless, Defendants cited evidence, in the form of a publicly available  
 19 website, showing SmileDirectClub, LLC's pricing. Dkt. 1 ¶ 30 (citing *How Much Does Smile Direct Club*  
 20 *Cost?*, SMILEDIRECTCLUB, <https://smiledirectclub.com/blog/how-much-does-smiledirectclub-cost/> (last  
 21 visited Jan. 6, 2022)). The Court may take judicial notice of public websites. *Brown v. Google LLC*, 525  
 22 F. Supp. 3d 1049, 1061 (N.D. Cal. 2021). Sulizer Decl. Ex. 1 is a PDF copy of that webpage. It shows  
 23 that customers who are approved for treatment utilizing SmileDirectClub's telehealth platform have two  
 24 payment options: a lump-sum payment of \$1,950 or payments over time totaling \$2,386. Sulitzer Decl.  
 25 ¶ 13. Since December 3, 2017—the start of the putative class period (see Dkt. 1-1 (Compl.) ¶ 20),  
 26 customers who utilized SmileDirectClub, LLC's telehealth platform for clear-aligner treatment have paid  
 27 no less than \$850. *Id.* ¶ 14. Even when only the lowest payment amount is taken into account, only 5,883

1 customers (5.883% of the “approximately 100,000 California patients” in Navarro’s proposed class (Dkt.  
 2 1-1 (Compl.) ¶ 2) would need to obtain the requested relief, the “disgorgement of all monies paid by  
 3 patients to Defendants” (Dkt. 1-1 (Compl.) at Prayer for Relief ¶ A) to surpass the \$5 million threshold.  
 4 (5,883 x \$ 850 = \$5,000,550.)

5 **2. *Neither the local-controversy exception nor the home-state exception applies.***

6 Navarro claims that both the local-controversy exception, under 28 U.S.C. § 1332(d)(4)(A), and  
 7 the home-state exception, under 28 U.S.C. § 1332(d)(4)(B), apply. He is wrong on both fronts.

8 Both the local-controversy exception to CAFA jurisdiction and the home-state exception to CAFA  
 9 jurisdiction require that one or more of the defendants is a citizen of the state in which the action is filed.  
 10 The former instructs a court to decline jurisdiction over a class action in which:

- 11 • more than two-thirds of the class members are citizens of the state in which the action  
   12 was filed;
- 13 • at least one defendant is a defendant from which significant relief is sought, whose  
   14 conduct forms a significant basis for the class’s claims, *and who is a citizen of the state*  
   *in which the action was filed*;
- 15 • principal injuries from the alleged conduct were incurred in the state in which the action  
   16 was originally filed; and
- 17 • no other class action has been filed asserting the same or similar claims against  
   18 defendants in the preceding three-year period.

19 28 U.S.C. § 1332(d)(4)(A). Similarly, the latter requires that two-thirds of the class members *and the*  
 20 *primary defendants are citizens of the state in which the action was filed*. 28 U.S.C. § 1332(d)(4)(B).  
 21 Because none of the Defendants are California citizens, neither exception applies.

22 Navarro has not established, and cannot establish, that any of the Defendants are California citizens  
 23 and thus cannot satisfy either the local-controversy or the home-state exception. As outlined above, none  
 24 of the Defendants are California citizens under the relevant legal standards. Navarro’s only argument for  
 25 considering SmileDirectClub, LLC to be a California company focuses on the entity’s operations. Dkt.  
 26 22-1 (Mot.) at 4. This ignores the applicable test for an LLC’s citizenship, cited in Defendants’ Notice of  
 27 Removal and *supra*. Dkt. 1 (Not. of Removal) ¶ 9. For both the local-controversy and home-state

1 exception, the statute considers the defendants' *citizenship*, not the locations in which the defendants  
 2 operate. 28 U.S.C. § 1332(d). To establish citizenship, courts focus on the relevant factors under the law,  
 3 rather than nationwide-companies' operating locations. *Hertz Corp.*, 559 U.S. at 93–94 (rejecting  
 4 approach to principal-place-of-business test that would measure the total amount of business activities  
 5 conducted by the corporation in the state to determine if they were larger than the next-ranking state); *see*  
 6 also *Rodriguez v. Home Depot, USA, Inc.*, No. 16-cv-01945-JCS, 2016 WL 3902838, at \*4 (N.D. Cal.  
 7 July 19, 2016) (determining citizenship of a national retailer based on incorporation and principal place  
 8 of business). Because not one of SmileDirectClub, Inc., SmileDirectClub, LLC, or Sulitzer is a California  
 9 citizen, Navarro cannot establish that either the local-controversy or home-state exception applies.

10 As for the third prong of the local-controversy exception—that the principal injuries from the  
 11 alleged conduct were incurred in the state in which the action was originally filed—Navarro never  
 12 experienced the theory of injury that he claims his Complaint pursues. Navarro alleges that injuries arose  
 13 when dental services were performed at SmileShops. Dkt. 1-1 (Compl.) ¶¶ 16–17; Dkt. 22-1 (Mot.) at  
 14 4:19–20. Record evidence, however, shows that Navarro did not receive any services at a SmileShop.  
 15 Specifically, customers do not need to visit a SmileShop to create an account with SmileDirectClub;  
 16 instead, they may do so either online, or at a participating dentist or orthodontist office. Dkt. 20 (Skinner  
 17 Decl.) ¶ 4. Evidence already in the record (attached to Defendants' Motion to Compel Arbitration) shows  
 18 that Navarro registered online—i.e. he did not procure services through a SmileShop. Skinner Decl. ¶ 20–  
 19 21. No wonder Navarro's Complaint never alleges that he procured any services at a SmileShop. Navarro  
 20 therefore never suffered the principal injuries identified in his Motion to Remand and cannot satisfy the  
 21 third prong of the local-controversy requirement.

22 **B. Navarro's Motion does nothing to undercut Defendants' showing that 28 U.S.C.**  
 23 **§ 1332(a) provides a separate basis for federal jurisdiction.**

24 Defendants' Notice of Removal sufficiently alleged facts showing that the Court has jurisdiction  
 25 under 28 U.S.C. § 1332(a). As explained above, diversity of citizenship exists between Navarro, a  
 26 California citizen, and Defendants, non-California citizens. Additionally, Navarro's claims satisfy the  
 27 \$75,000 amount-in-controversy requirement—Navarro alleges medical, hospital, psychological, and

1 related expenses as well as loss of earning and loss of earning capacity. Dkt. 1-1 (Compl.) at ¶¶ 96–98.  
 2 Navarro’s counsel demanded \$90,000 to resolve the case on an individual basis, demonstrating that the  
 3 purported value of his claims exceeds \$75,000. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002)  
 4 (“A settlement letter is relevant evidence of the amount-in-controversy if it appears to reflect a reasonable  
 5 estimate of the plaintiff’s claim.”).

6 In the Motion, Navarro fails to challenge Defendants’ showing that his Complaint satisfies 28  
 7 U.S.C. § 1332(a)’s amount-in-controversy requirement. When a complaint does not state an amount-in-  
 8 controversy, a defendant may assert the amount in its notice of removal and need only provide a plausible  
 9 allegation that the requisite amount is satisfied. *Dart Cherokee*, 574 U.S. at 88–89. No evidentiary  
 10 submissions are required. *Id* at 84. A defendant bears the burden of showing the amount-in-controversy  
 11 by a preponderance of the evidence only when a plaintiff contests that the standard has been satisfied. *Id.*  
 12 at 88; *see also Conroy v. Ridge Tool Co.*, No. 4:20-cv-05882-YGR, 2020 WL 8641963, at \*1 (N.D. Cal.  
 13 Nov. 18, 2020) (not analyzing amount-in-controversy where defendant asserted it was satisfied and  
 14 plaintiff did not dispute that assertion); *Tinoco v. Walmart Inc.*, No. 20-cv-01602-BLF, 2020 WL  
 15 2829830, at \*2 n. 1 (N.D. Cal. June 1, 2020) (finding that where the amount-in-controversy was  
 16 uncontested the defendant need only include plausible allegations that amount-in-controversy was met);  
 17 *Langston v. T-Mobile, Inc.*, No. LA CV18-01972 JAK (ASx), 2018 WL 2382464, at \*4 (C.D. Cal. May  
 18 24, 2018) (noting that “evidence establishing the amount-in-controversy is only required when the plaintiff  
 19 contests the defendant’s allegations thereon”). Defendants have therefore met their burden by plausibly  
 20 alleging that the amount-in-controversy has been met.

21 While he does not contest the amount-in-controversy, Navarro does contest Defendants  
 22 SmileDirectClub, Inc. and Sulitzer’s citizenships for purposes of establishing diversity jurisdiction. Dkt.  
 23 22-1 (Mot.) at 5–6. But Navarro’s challenge to SmileDirectClub, Inc.’s citizenship misapplies the  
 24 standard set forth in *Hertz Corp. v. Friend*. Navarro argues that the SmileShops—operating branches of  
 25 Defendants’ business—are SmileDirectClub, Inc.’s nerve centers. Dkt. 22-1 (Mot.) at 5–6. It’s difficult  
 26 to count the number of ways this argument is wrong and, unsurprisingly, Navarro asserts no authority  
 27 supporting it. He ignores the Supreme Court’s admonition, cited above, that the nerve center is found

1 typically at the corporation’s headquarters, where the officers direct and control the corporation’s  
 2 activities. *Hertz Corp.*, 559 U.S. at 92–93. Navarro also ignores publicly available information  
 3 confirming the Notice of Removal’s statement that SmileDirectClub, Inc.’s headquarters is in Nashville,  
 4 Tennessee. SmileDirectClub, Annual Report (Form 10-K) (Mar. 12, 2021) at 18 (explaining that  
 5 SmileDirectClub, Inc.’s “team members at [its] Nashville headquarters include [its] executive team, as  
 6 well as team members responsible for [its] customer care, marketing, finance, legal, people and  
 7 organization, information technology, data science, and analytics”). As shown above, SmileDirectClub,  
 8 Inc. is a citizen of Delaware and Tennessee and is therefore diverse from Navarro.

9 Navarro’s arguments as to Sulitzer’s citizenship likewise fall short. Navarro states that “[a] google  
 10 search for Defendant Sulitzer suggests various holdings and operations in California.” Dkt. 22-1 (Mot.)  
 11 at 6. Navarro does not elaborate on what “various holdings and operations” means, nor does he cite case  
 12 law holding that an individual’s citizenship should be determined by his “holdings and operations.” In  
 13 contrast, Defendants have shown above that Defendant Sulitzer is a citizen of Washington, and they have  
 14 done so by a preponderance, and then some. As such, his citizenship is diverse from Navarro’s.

15 **C. Navarro’s request for fees is both unjustified and unjust.**

16 Incredibly, Navarro closes his Motion with a request for fees based on Defendants’ “improper”  
 17 removal of this matter to federal court. Dkt. 22-1 (Mot.) at 6. Navarro has no good-faith basis to request  
 18 fees. In fact, Navarro’s lacks a good-faith basis for filing his Motion to Remand. As shown above,  
 19 Navarro’s arguments supporting remand lack a foundation and misconstrue basic jurisdictional standards.  
 20 If any fee-shifting should occur at all, Navarro should be required to pay Defendants’ fees incurred in  
 21 responding to the “arguments” in his Motion.

22 **VI. CONCLUSION**

23 Defendants have established that federal jurisdiction is proper under both 28 U.S.C. § 1332(a) and  
 24 28 U.S.C. § 1332(d). The Court should deny Plaintiff Navarro’s Motion to Remand.

1 Dated: February 28, 2022

Respectfully submitted,

2 /s/ Michael D. Meuti

3 Michael Dominic Meuti (SBN: 227939)  
4 BENESCH, FRIEDLANDER, COPLAN &  
5 ARONOFF LLP  
6 200 Public Square, Suite 2300  
7 Cleveland, OH 44114-2378  
8 Telephone: 216.363.4500  
9 Facsimile: 216.363.4588  
10 mmeuti@beneschlaw.com

11 Krista Enns (SBN: 206430)  
12 BENESCH, FRIEDLANDER, COPLAN &  
13 ARONOFF LLP  
14 100 Pine Street, Suite 100  
15 San Francisco, CA 94111  
16 Telephone: 628.600.2241  
17 kenns@beneschlaw.com

18 -and-

19 Erin N. Baldwin (*Pro Hac Vice forthcoming*)  
20 BENESCH, FRIEDLANDER, COPLAN &  
21 ARONOFF LLP  
22 41 South High Street, Suite 2600  
23 Columbus, OH 43215-6164  
24 Telephone: 614.223.9300  
25 Facsimile: 614.223.9330  
26 enbaldwin@beneschlaw.com

27 *Attorneys for Defendants SmileDirectClub, Inc.;*  
28 *SmileDirectClub, LLC; and Dr. Jeffrey Sulitzer*